

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BB&amp;HC, LLC et al.,

Plaintiffs,

-V-

INDUSTRYBUILT SOFTWARE LTD. et al.,

Defendants.

21-CV-6463 (JMF)

ORDER

JESSE M. FURMAN, United States District Judge:

Plaintiffs BB&HC, LLC; Cherry Capital Foods, LLC; and Earthy Delights, Inc. bring this action against Defendants Industrybuilt Software Ltd. and Aptean Inc., invoking the Court’s subject matter jurisdiction on the ground of diversity of citizenship. *See* ECF No. 1 (“Compl.”), ¶ 11. Plaintiffs allege that Defendant Industrybuilt Software Ltd. is “a foreign private limited company organized and previously existing under the laws of Ontario, Canada.” *Id.* ¶¶ 5-8.

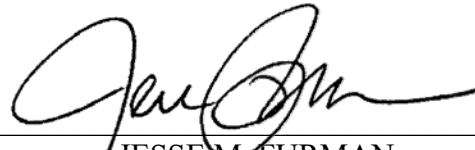
It is well established that, “for purposes of diversity jurisdiction, a *corporation* is deemed to be a citizen of both the state of its incorporation and the state where it has its principal place of business,” *Durant, Nichols, Houston, Hodgson & Cortese-Costa P.C. v. Dupont*, 565 F.3d 56, 59 (2d Cir. 2009) (emphasis added) (citing 28 U.S.C. § 1332(c)), whereas a *limited liability company* or LLC is deemed to be a citizen of each state of which its members are citizens, *see, e.g., Handelsman v. Bedford Vill. Assocs. L.P.*, 213 F.3d 48, 51-52 (2d Cir. 2000). Thus, courts generally inquire whether a foreign business entity “is structured or organized as an equivalent to either a corporation or a limited liability company under United States law” as the first step in determining the entity’s citizenship for purposes of diversity jurisdiction. *Century Metal Recycling, Pvt. Ltd. v. Dacon Logistics, LLC*, No. 3:13-CV-00093 (CSH), 2013 WL 5929816, at \*3 (D. Conn. Nov. 4, 2013); *see also, e.g., Horne v. Kreckler*, No. 2:20-CV-71 (TLS) (JPK), 2020 WL 814007, at \*2 (N.D. Ind. Feb. 19, 2020) (addressing a Canadian limited company). The party or parties invoking the Court’s subject matter jurisdiction — here, Plaintiffs — bear the burden of establishing that jurisdiction exists. *See, e.g., Conyers v. Rossides*, 558 F.3d 137, 143 (2d Cir. 2009).

Accordingly, it is hereby ORDERED that, on or before **August 18, 2021**, Plaintiffs shall address in writing, filed on ECF, the nature of Defendant Industrybuilt Software Ltd.'s structure for purposes of determining its citizenship. If its structure is equivalent to that of a United States limited liability company or partnership, then Plaintiffs shall also address the citizenship of each of its members (or the appropriate analogue). Defendants may file a response no later than **August 25, 2021**, or **within one week of entering a notice of appearance**, whichever is later.

Plaintiffs shall promptly serve Defendants with a copy of this Order and file proof of such service on the docket no later than **August 10, 2021**.

SO ORDERED.

Dated: August 4, 2021  
New York, New York



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JESSE M. FURMAN  
United States District Judge